

**AGREEMENT REGARDING JOINT PAVEMENT  
MAINTENANCE SURFACE SEAL PROJECT 2022**

This AGREEMENT REGARDING JOINT PAVEMENT MAINTENANCE SURFACE SEAL PROJECT 2022 (“**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 (the “**Effective Date**”), by and between the Contra Costa County, a political subdivision of the State of California (“**County**”) and the City of Lafayette (“**Lafayette**”), a municipal corporation of the State of California. Moraga and Lafayette may be referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

R E C I T A L S

A. Lafayette intends to proceed with pavement maintenance work in the form of a surface seal project on certain streets located with the City of Lafayette, as described in detail in Exhibit A, attached hereto and incorporated herein by this reference (the “**Lafayette Surface Seal Work**”).

B. The County intends to proceed with pavement maintenance work in the form of a surface seal project on certain streets located within Contra Costa County, as described in detail in Exhibit B, attached hereto and incorporated herein by this reference (the “**County Surface Seal Work**”).

C. Both Lafayette and the County intend to use their own funding sources for the Lafayette Surface Seal Work and the County Surface Seal Work, respectively.

D. In order to more effectively implement their respective projects and save project costs, the Parties desire to coordinate and cooperatively implement the Lafayette Surface Seal Work and the County Surface Seal Work collectively in a joint pavement surface seal project pursuant to the terms of this Agreement (the “**Project**”) and enter into a single construction contract for the Project where, among other things, each Party will be responsible for Project costs within its jurisdiction.

T E R M S

NOW, THEREFORE, the Parties in consideration of the mutual promises set forth in this Agreement, agree as follows:

1. Purpose of Agreement. The purpose of this Agreement is for the Parties to cooperatively implement the construction of the Project and for each Party to be responsible for the costs of Project within its jurisdiction.

2. Responsibilities of the Parties.

2.1 Lafayette. Lafayette shall do the following:

a) Perform its own design, engineering, administration, inspection, materials and testing for the Lafayette Surface Seal Work and be responsible for all associated costs associated therewith;

b) Prepare bid and contract documents, including, among other things, bid schedule, contract, general conditions, and special provisions for the purpose of entering into a construction contract with a contractor for the Project;

- i. Utilize the City of Lafayette Standard Specifications (March 2013) for the Project bid and contract documents;
- ii. Lafayette reserves discretion as to form and language of the bid and contract documents for the Project, subject to reasonable review and approval by the County in accordance with Section 3.2(c) below;

c) In the Project bid and contract documents, require the contractors for the Project to indemnify and hold harmless both the County and Lafayette and name both the County and Lafayette as additional insureds, with language that shall be reviewed and reasonably approved by the County as provided for in Section 3.2(c);

d) Incorporate design, plans, and construction quantities for the County Surface Seal Work, that are furnished by the County to Lafayette, in the bid and contract documents for the Project;

e) Let for bid a construction contract for Project; notify the County of the lowest responsible bidder submitting a responsive bid for the combined value of Project; notify the County if Lafayette is dissatisfied with the bids received and intends to exercise its right to withdraw from the Project; and, unless either Party intends to withdraw pursuant to Section 11.1 below, award the construction contract for the Project to the lowest responsible bidder submitting a responsive bid;

f) Administer the Project construction contract in coordination with the County construction inspection and management personnel and be responsible for all costs associated with inspection, material testing, and construction management of the Lafayette Surface Seal Work;

g) Prepare and provide a financial accounting of the construction contract costs of the Project associated with the County Surface Seal Work (the "**County Costs**") to the County; and

h) Work cooperatively and in good faith with the County to implement the Project, including proportionate cost sharing in the event of any unforeseen costs regarding the Project.

2.2 The County shall do the following:

a) Prepare its own design and engineering for the County Surface Seal Work and be responsible for all associated costs, using applicable Project technical provisions developed and furnished by Lafayette;

b) Timely provide contract drawings and construction bid quantities for the County Surface Seal Work to Lafayette to be incorporated into the bid and contract

documents for the Project. Such drawings and information shall be consistent with a form to be specified by Lafayette;

c) Review and reasonably approve Project bid and contract documents prepared by Lafayette as noted in Section 3.1(b) and (c) above in a timely manner;

d) Review the bids received for the Project and timely notify Lafayette if County is dissatisfied with the bids received and intends to exercise its right to withdraw from the Project as provided in Section 11.1 below;

e) Furnish and identify, at its sole cost, construction management personnel, who shall have authority to represent the County and make final decisions on all construction matters that may arise during the Project. These personnel shall administer the construction of the County Surface Seal Work in coordination with Lafayette;

f) Review and respond to all requests for information, inspection, change orders and approvals related to the County Surface Seal Work with its approval, disapproval, and/or applicable comments within five (5) working days after submission by Lafayette;

g) Be responsible for all costs associated with the inspection, material testing, and construction management of the County Surface Seal Work;

h) Reimburse Lafayette for the County Costs within 30 days of receiving the financial accounting as provided in Section 3.1(g); and

i) Work cooperatively and in good faith with Lafayette to implement the Project, including proportionate cost sharing in the event of any unforeseen costs regarding the Project.

### 3. Mutual Indemnification.

3.1 Lafayette shall indemnify, defend, assume all liability for and hold harmless the County and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including without limitation any fines, penalties, judgments, actual litigation expenses and attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons (collectively, "**Claims**"), to the extent arising out of or in any way connected with the Project that are caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Lafayette, its officers, employees, agents, contractors, subcontractors, or any persons under its direction or control; provided, however, that Lafayette is not required to indemnify County for the proportion of liability attributable to the negligence or willful misconduct of County, its officers and employees. This provision will survive the expiration or termination of this Contract.

3.2 The County shall indemnify, defend, assume all liability for and hold harmless Lafayette and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all Claims to the extent arising out of or in any way

connected with the Project that are caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of County, its officers, employees, agents, contractors, subcontractors, or any persons under its direction or control, provided, however, that County is not required to indemnify Lafayette for the proportion of liability attributable to the negligence or willful misconduct of Lafayette, its officers and employees. This provision will survive the expiration or termination of this Contract.

4. No Waiver. The waiver by any Party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

5. Notices. Any notice or other communication ("**Notice**") that either Party may desire to give to the other Party under this Agreement must be in writing and may be given by any commercially acceptable means, including via first class certified mail, personal delivery or overnight courier, to the Party to whom the Notice is directed at the address of the Party as set forth below, or at any other address as that Party may later designate by Notice. Any Notice shall be deemed received immediately if delivered by hand, on the third day from the date it is postmarked if delivered by first-class mail, Certified and postage prepaid, return receipt requested, and on the next business day if sent via nationally recognized overnight courier.

Lafayette:                   City of Lafayette  
                                  Attention: City Manager  
                                  P. O. Box 1968  
                                  Lafayette, CA 94549

County:                     Contra Costa County  
                                  Attention: Brian Balbas, Public Works Director  
                                  255 Glacier Drive  
                                  Martinez, CA, 94553

6. Interpretation; Venue.

6.1 Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

6.2 Venue. This Agreement is made in Contra Costa County, California. The venue for any legal action in state court filed by any Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Contra Costa. The venue for any legal action in federal court filed by any Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California.

7. Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create any rights in third parties and the Parties do not intend to create such rights.

8. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Agreement as though fully set forth herein.

9. Severability. If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

10. Amendment of Agreement. This Agreement may be amended at any time by mutual Agreement of the Parties in writing and signed by all Parties.

11. Term; Termination.

11.1 Term. This Agreement is effective as of the Effective Date and shall continue in effect until the Project is complete, as evidenced by Lafayette's recording of a notice of completion for the Project unless earlier terminated as provided herein.

11.2 If either Party is dissatisfied with the Project bids Lafayette receives, it may withdraw from the Project by providing written notice to the other Party of its intent to withdraw. Such notice shall be provided a minimum of five (5) business days prior to the date set for award of the contract for the Project. If a Party provides written notice of withdrawal to the other Party, this Agreement shall be terminated as of the date of the notice. In the event of termination of this Agreement pursuant to this Section 11.1, both Parties shall bear their own costs incurred up to the effective date of termination. Notwithstanding the foregoing, any costs associated with non-cancellable obligations accrued by Lafayette arising out of the County Surface Seal Work shall be reimbursed by the County to Lafayette.

11.3 Except as provided in Section 11.1, neither Party may terminate this Agreement except due to an uncured material breach of the Agreement by the other Party. In the event of a material breach, the non-breaching Party must provide written notice of the breach to the breaching Party, and the breaching Party shall have thirty (30) calendar days from the date of the notice of material breach to cure. In the event of termination pursuant to this Section 11.2 due to the County's breach, County shall pay Lafayette for all costs incurred by Lafayette with respect to the County Surface Seal Work up to the effective date of termination, including costs associated with non-cancellable obligations.

12. Entirety of Contract. This Agreement constitutes the entire Agreement between the Parties relating to the subject of this Agreement and supersedes all previous Agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE TO  
AGREEMENT REGARDING JOINT PAVEMENT MAINTENANCE SURFACE SEAL  
PROJECT BETWEEN THE CITY OF LAFAYETTE AND CONTRA COSTA COUNTY**

IN WITNESS WHEREOF, this Agreement is executed by the Parties as of the Effective Date.

CITY OF LAFAYETTE, a municipal corporation

By: \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

Contra Costa County

By: \_\_\_\_\_  
Name: Brian M. Balbas  
Title: Public Works Director

APPROVED AS TO FORM:

Mary Ann McNett Mason, County Counsel

By: \_\_\_\_\_

EXHIBIT A

**LAFAYETTE SURFACE SEAL WORK**

Middle Road (Crest Road to Crest Road)  
Diablo Circle (Crest Road to Hidden Valley, entire circle)  
Dahlia court (St. Francis Drive to End)  
St. Francis Court (St. Francis Drive to End)  
Franklin Lane (Happy Valley Road to End)  
Rose Lane (Happy Valley Road to End of Public Road)  
Glen Road (Thompson Road to End)  
North Thompson Road (Deer Hill Road to Oak Hill Road)  
Oak Hill Road (Deer Hill Road to N. Thompson Road)  
Orchard Road (Deer Hill Road to End)  
Dewing Avenue (Brook Street to Boyer Circle)  
Boyer Circle (Dewing Avenue to End)  
Moraga Road (Rimrock Road to St. Mary' Road)  
South Silversprings Road (Silversprings Road to End)  
Beaumont Court (Withers Avenue to End)  
Del Rey Street (Withers Avenue to End)  
Elvia Street (Del Rey Street to End)  
Del Rey Court (Del Rey Street to End)  
Burton Drive (Glenside Drive to Lucas Drive)  
Sharon Court (Burton Drive to End)  
Gold Court (Burton Drive to End)  
Apache Court (Burton Drive to End)  
Antonio Court (Lucas Drive to End)  
Crofton Court (Lancaster Drive to End)  
Huntleigh Drive (Lucas Drive to Somerset Drive)  
Somerset Place (Huntleigh Drive to End)  
Merriewood Drive (Silverado Drive to Rohrer Drive)  
Indian Way (Merriewood Drive to End)  
Arrowhead Drive (Brent Drive to End)  
Burr Court (Arrowhead Drive to End)  
Brent Court (Arrowhead Drive to End)  
Silverado Drive (Indian Way to End)  
Peacock Boulevard (N. Lucille Lane to End)  
Florence Drive (St. Mary's Road to South Lucille)  
N. Lucille Lane (Florence Drive to Mildred Avenue)  
Helen Avenue (N. Lucille Lane to Mildred Lane)  
Mildred Lane (Florence Drive to End (W))

EXHIBIT B

**COUNTY SURFACE SEAL WORK**

Sky view Court (Knoll Drive to End)  
Knoll Drive (Camino Pablo to end of Public Road)  
Camino Pablo (South side of Camino Pablo Park to end of Public Road)